

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)

James Carlisle)

Dadeville, Tallapoosa County, Alabama)

****Proposed****

ADMINISTRATIVE

ORDER NO: 19-__-AP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22- 22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.), the Alabama Department of Environmental Management (hereinafter, the “Department” or “ADEM”) Administrative Code of Regulations (hereinafter, “ADEM Admin. Code R.”) promulgated pursuant thereto, and the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended, the Department makes the following FINDINGS:

1. James Carlisle (hereinafter, “Carlisle”) owns real property located at 149 Holiday Drive in Dadeville, Tallapoosa County, Alabama (hereinafter, the “Site”).

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. ADEM Admin. Code r. 335-3-3-.01(2)(b)1 states that "...open burning must take place on the property on which the combustible fuel originates."

5. ADEM Admin. Code r. 335-3-3-.01(2)(b)4 states that "Only vegetation and untreated wood may be burned. It is unauthorized to open burn heavy oils, asphalt products, plastics, vinyl materials, insulation, paper, cardboard, natural or synthetic rubber, salvage or scrap materials, chemicals, garbage, treated or painted wood, or any trash."

6. On October 8, 2018, Department personnel conducted a complaint investigation of the Site and observed unauthorized open burning of imported vegetation and refuse. Carlisle informed the Department's Inspector that people pay him to dump vegetative debris at the Site. At the time of the inspection, the fire had been burning for about two weeks per Carlisle.

7. On October 17, 2018, the Department received a second complaint of unauthorized open burning being conducted at the Site.

8. Pursuant to Ala. Code § 22-22A-5(18)c., *as amended*, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day

such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: Carlisle conducted unauthorized open burning of imported vegetation and refuse at the Site. The Department considers these violation to be serious.

B. THE STANDARD OF CARE: There appeared to be no care taken by Carlisle to comply with the applicable requirements of the ADEM Admin. Code rs. 335-3-3-.01(2)(b)1 and 335-3-3-.01(2)(b)4.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Carlisle likely derived economic benefit by not legally disposing of imported vegetation and refuse.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There were no efforts by Carlisle to mitigate possible effects of these violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department received complaints of unauthorized open burning being conducted by Carlisle in 2009 and 2011. On November 15, 2011, the Department issued a Warning Letter to Carlisle regarding the unauthorized open burning. On November 29, 2011, the Department received a response to the Warning Letter in which Carlisle stated that he understands the Department's Open Burning regulations and would cease all burning.

F. THE ABILITY TO PAY: Carlisle has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well

as the need for timely and effective enforcement, and has concluded that a civil penalty herein is appropriate (*See* "Attachment A", which is hereby incorporated into these Findings).

ORDER

Based upon the foregoing FINDINGS and pursuant to Ala. Code §§22-22A-5(10), 22-22A-5(12), 22-22-5(18), and 22-28-18 (2006 Rplc. Vol.), it is hereby ORDERED:

A. That, not later than forty-five days after the issuance of this Order, Carlisle shall pay to the Department a civil penalty in the amount of \$5,000.00 for the violations cited herein. Said penalty shall be made payable to the Alabama Department of Environment Management by certified or cashier's check and shall be submitted to:

Office of General Counsel
Alabama Department of
Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

B. That, immediately upon receipt of this Order and continuing thereafter, Carlisle shall ensure immediate and future compliance with ADEM Admin. Code rs. 335-3-3-.01(2)(b)1 and 335-3-3-.01(2)(b)4

C. That, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

D. Except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State or local

law, and shall not be construed to waive or relieve Carlisle of his obligations to comply in the future with any permit or other written direction from the Department.

E. That, issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Carlisle for the violations cited herein.

F. That, failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against Carlisle for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this _____ day of _____, 2019.

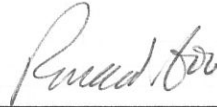
Lance R. LeFleur, Director
Alabama Department of Environmental
Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
(334) 271-7700

CERTIFICATE OF SERVICE

I, Ronald W. Gore, do hereby certify that I have served this Proposed Administrative Order upon the person(s) listed below by sending the same, postage paid, through the United States Mail **91 7199 9991 7030 3272 4561** with instructions to forward and return receipt, to:

Mr. James Carlisle
149 Holiday Drive
Dadeville, Alabama 36853

DONE this the 4th day of January 2019.



Ronald W. Gore
Chief - Air Division
Alabama Department of
Environmental Management

ATTACHMENT A

James Carlisle
Dadeville, Tallapoosa County, AL

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Illegal open burning	1	\$2,000	\$1,000	\$1,000	
					Total of Three Factors
<i>TOTAL PER FACTOR</i>		<i>\$2,000</i>	<i>\$1,000</i>	<i>\$1,000</i>	<i>\$4,000</i>

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	
Total Adjustments (+/-) <i>Enter at Right</i>	\$0

Economic Benefit (+)	\$1,000
Amount of Initial Penalty	\$5,000
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$5,000.00

Footnotes

* See the "Department's Findings" portion of the Order for a detailed description of each violation and the penalty factors.